

October 28, 2005

Stacey Fulhorst
Executive Director
City of San Diego Ethics Commission
[Address Redacted]
San Diego, CA 02101

**Re: Your Request for Informal Assistance
Our File No. I-05-161**

Dear Ms. Fulhorst:

This letter is in response to your request for advice regarding the campaign disclosure provisions of the Political Reform Act (the "Act").¹ As your request seeks general guidance relating to the campaign disclosure provisions of the Act, rather than asking for advice on behalf of any particular candidate or committee concerning the duties of that candidate or committee under the Act, we are treating your request as one for informal assistance.² The assistance provided in this letter is solely based on the facts provided to us in your request. Our assistance is therefore only applicable to the extent that the facts provided to us in your request are correct, and all of the material facts have been provided. The Commission does not act as a finder of fact when issuing advice or informal assistance. (*In re Oglesby* (1975) 1 FPFC Ops. 71.)

QUESTIONS

1. If a political party committee makes a payment for a member communication that supports a city candidate, and the payment is made during a pre-election period prior

¹ The Act is contained in Government Code sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in sections 18109 through 18997 of title 2 of the California Code of Regulations. All regulatory references are to title 2, division 6 of the California Code of Regulations, unless otherwise indicated.

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Reg. 18329, subd. (c), enclosed.)

to the candidate's election, how must the payment be reported by the political party committee?

2. If a political party committee makes a payment for a member communication that supports a city candidate, but the communication is not made at the behest of the candidate, and the payment is made during the late reporting period prior to the candidate's election, must the payment be reported by the political party committee on a Late Independent Expenditure Report (Form 496)?

3. If a political party committee is required to file a Late Independent Expenditure Report (Form 496) because it made a payment for a member communication that supports a city candidate but was not made at the behest of the candidate, and the payment was made during the late reporting period prior to the candidate's election, must the political party committee also disclose on that report all contributions of \$100 or more that it received since it filed its last previous campaign disclosure statement?

4. If a political party committee makes a payment for a member communication that supports a city candidate, the communication is coordinated with the candidate, and the payment is made during the late reporting period prior to the candidate's election, must the political party committee report the payment on a Late Contribution Report (Form 497)?

5. If a political party committee is required to file a Late Contribution Report (Form 497) because it made a payment for a member communication that supports a city candidate, the communication is coordinated with the candidate, and the payment is made during the late reporting period prior to the candidate's election, is the political party committee also required to disclose on that report the contributions that it received during the late reporting period?

6. If a political party committee makes payments totaling \$500 or more for member communications that support or oppose a city candidate in a special city election that does not coincide with a statewide election, is the political party committee required to disclose its payments within the same time periods and in the same manner as the candidate being supported?

CONCLUSIONS

1. A political party committee that makes a payment for a member communication that supports a city candidate but is not made at the behest of the candidate, during a pre-election period prior to the candidate's election, must report the payment on a Supplemental Independent Expenditure Report (Form 465) if the payment, alone or in combination with other independent expenditures made by the political party committee during the pre-election period to support the candidate, totals \$1,000 or more.

However, a political party committee that makes a payment for a member communication that supports a city candidate and is coordinated with the candidate, and the payment is made during a pre-election period prior to the candidate's election, must report the payment as a contribution on a Supplemental Pre-election Statement (Form 495) if the payment, alone or in combination with other contributions made by the political party committee during the pre-election period for the same election, totals \$10,000 or more.

2. A political party committee that makes a payment for a member communication that supports a city candidate but is not made at the behest of the candidate, and is made during the late reporting period prior to the candidate's election, must report the payment on a Late Independent Expenditure Report (Form 496) if the payment totals \$1,000 or more.

3. A political party committee that is required to file a Late Independent Expenditure Report (Form 496) must also disclose on that report all contributions of \$100 or more that it received since it filed its last campaign disclosure statement.

4. A political party committee that makes a payment for a member communication that supports a city candidate and is coordinated with the candidate, and the payment is made during the late reporting period prior to the candidate's election, must report the payment on a Late Contribution Report (Form 497) if the payment totals \$1,000 or more.

5. A political party committee that is required to file a Late Contribution Report (Form 497) for a contribution made to a city candidate is not required to disclose the contributions that it received during the late reporting period unless the city's late reporting period coincides with the late reporting period for a state election.

6. A political party committee making payments totaling \$500 or more for member communications that support or oppose a city candidate in a special city election that does not coincide with a statewide election is not required to disclose the payments within the same time periods and in the same manner as the candidate being supported, except as described in Conclusions 1-5, above.

FACTS

You are the Executive Director of the City of San Diego Ethics Commission. Under the San Diego City Charter, your agency has a duty to: advise and educate city officials and the public about governmental ethics laws; monitor compliance with those laws by auditing campaign disclosure statements and conducting investigations; and refer violations of those laws to appropriate enforcement agencies. You have asked about the reporting duties of political party committees that make payments for member communications supporting or opposing city candidates, as your city is conducting a

special; election on November 8, 2005 that coincides with a statewide election on the same date.

ANALYSIS

Member Communications

Under section 85312, payments made by an organization for communications to its members, employees, shareholders, or the families of its members, employees, or shareholders, for the purpose of supporting or opposing a candidate or a ballot measure, are neither contributions nor expenditures that need be reported under the Act, provided the payments are not made for general public advertising. (Reg. 18531.7.) However, section 85312 contains an express exception to this rule for payments made by a political party to communicate with its members. Section 85312 provides that:

“ . . . payments made by a political party for communications to its members who are registered with that party which would otherwise qualify as contributions or expenditures shall be reported in accordance with Article 2 (commencing with Section 84200) of Chapter 4, and Chapter 4.6 (commencing with Section 84600), of this title.”

In light of this express language in the statute, payments made by a political party committee³ for communications with the party's members are considered to be reportable as either contributions or independent expenditures to the extent that the payments qualify as either of them.⁴ A payment made for a communication supporting or opposing a candidate qualifies as a contribution if it is made at the behest of a candidate or committee. (§ 82015, subd. (b)(2).) A payment made for a communication supporting or opposing a candidate qualifies as an independent expenditure if it is not made at the behest of a candidate or committee. Under regulation 18225.7, subdivision (a), a payment is made “at the behest” of a candidate if it is made:

“ . . . under the control or at the direction of, or in cooperation, consultation, coordination, or concert with, at

³ A “political party committee” is defined in section 85205 as “the state central committee or county central committee of an organization that meets the requirements for recognition as a political party pursuant to Section 5100 of the Elections Code.”

⁴ As noted on page 3 of the July 20, 2001 Senate Rules Committee Floor Analysis of Senate Bill 34, as amended June 30, 2001, which added to section 85312 the exception for political party member communications, “payments made by a political party for communications to its members which would otherwise qualify as contributions or independent expenditures shall be reported in accordance with requirements under Article 2 of Chapter 4 of the Political Reform Act (PRA).” See also the FPPC Legislative Bill Analysis for SB 34 (Burton) of June 28, 2001.

the request or suggestion of, or with the express, prior consent of.”

Having established that payments made by a political party committee for member communications that support or oppose city candidates are reportable by the political party committee as either contributions or independent expenditures, all that remains is determining how those payments must be reported.

Disclosure By Political Party Committees Involved in City Elections

Questions 1 and 2, Disclosure of Payments For Member Communication During the Pre-election Reporting Period

Under the Act, the reporting requirements imposed on any committee are dependent on the nature of that committee and when the event occurs that must be reported. Section 82027.5, subdivision (b) provides that a political party committee, as defined in section 85205, is a state general purpose committee. As such, it is subject to the reporting requirements imposed on a state general purpose committee, and only those requirements, unless some special reporting duty has been imposed on the committee due to its nature as a political party committee.

A special reporting duty that has been imposed on political party committees is set forth in section 84200.5, subdivision (f). This provision of the Act requires a political party committee to file pre-election statements (Form 460) in connection with a state election, if the committee receives contributions totaling \$1,000 or more, or makes contributions or independent expenditures totaling \$500 or more during the period covered by the pre-election statement. However, as a state general purpose committee, a political party committee has no obligation to file regular pre-election statements in connection with a local election not coinciding with a state election, even if the committee makes contributions or independent expenditures supporting or opposing candidates or ballot measures in that election. (*Boyd* Advice Letter, I-96-085.) The filing obligations of state committees are established by the Act with an eye to ensuring that there is uniformity in the filing requirements for candidates and committees active throughout the state. (*In re Olson* (2001) 1 FPPC Ops. 112.)

In addition to any campaign statements that a state committee is required to file in connection with a state election, section 84203.5, subdivision (a) requires the committee to file a Supplemental Independent Expenditure Report (Form 465) in connection with a local election, if it makes independent expenditures totaling \$1,000 or more to support or oppose a candidate or ballot measure during a pre-election period prior to that election. A separate Supplemental Independent Expenditure Report must be filed for each candidate or ballot measure supported or opposed, and the report must be filed in the same place and by the same date that a committee primarily formed to support or oppose the candidate or ballot measure would be required to file a pre-election statement.

Thus, a political party committee that makes a payment for a member communication that supports a city candidate but is not made at the behest of the candidate, and makes the payment during a pre-election period prior to the candidate's election, must report the payment on a Supplemental Independent Expenditure Report (Form 465) if the payment, alone or in combination with other independent expenditures made by the political party committee during the pre-election period to support the candidate, totals \$1,000 or more.

Somewhat similar to the duty that is imposed on a state committee to file a Supplemental Independent Expenditure Report to disclose independent expenditures made in connection with a city election during the pre-election reporting period prior to an election is the duty imposed on such committees to file Supplemental Pre-election Reports (Form 495) concerning contributions. Section 84202.5, subdivision (a) provides that if a state committee makes contributions totaling \$10,000 or more to support or oppose one or more candidates or ballot measures in a local election during the period that runs from six months prior to the election to 17 days prior to the election, the committee shall file a Supplemental Pre-election Report disclosing those contributions. (Reg. 18402.5.) The Supplemental Pre-election Report must be filed no later than 12 days before the date of the election, and shall be filed at every location that the state committee is required to file its regular campaign statements. The Supplemental Pre-election Report is filed as an attachment to a consolidated campaign statement (Form 460) that must disclose all contributions received and expenditures made by the state committee since the closing date of the last campaign statement that it filed. However, the state committee is not required to file a Supplemental Pre-election Report during any semi-annual period in which it is required to file regular pre-election statements due to its involvement in an upcoming state election. (§ 84202.5, subd. (b).)

Thus, a political party committee that makes a payment for a member communication that supports a city candidate and is coordinated with the candidate, and the payment is made during a pre-election period prior to the candidate's election, must report the payment on a Supplemental Pre-election Statement (Form 495) if the payment, alone or in combination with other contributions made by the political party committee during the pre-election period for the same election, totals \$10,000 or more.

Questions 2 and 3, Disclosure of Independent Expenditures During the Late Reporting Period

Also in addition to any other campaign statements that a state committee is required to file in connection with a state election, section 84204, subdivision (a) requires the committee to file a Late Independent Expenditure Report (Form 496) in connection with a local election, to disclose any independent expenditures of \$1,000 or more that it makes to support or oppose a local candidate or ballot measure during the late reporting period prior to that election. The Late Independent Expenditure Report must be filed by the committee within 24 hours of making the expenditure, which is either when the communication is made, or when payment for the communication is made, whichever

occurs earlier. (§ 82025.) The Late Independent Expenditure Report must be filed in the same place that a committee primarily formed to support or oppose the candidate or ballot measure would be required to file its campaign statements. (§ 84204, subd. (c).) The report shall also disclose all contributions of \$100 or more that the committee has received since the closing date of the last campaign statement that it filed. (§ 84204, subd. (b); § 84211, subd. (f).)

Accordingly, a political party committee that makes a payment for a member communication that supports a city candidate but is not made at the behest of the candidate, and is made during the late reporting period prior to the candidate's election, must report the payment on a Late Independent Expenditure Report (Form 496) if the payment totals \$1,000 or more. On that report, the political party committee must also disclose all contributions of \$100 or more that it received since it filed its last campaign disclosure statement.

Questions 4 and 5, Disclosure of Contributions During the Late Reporting Period

Paralleling the duty that is imposed on a state committee to file a Late Independent Expenditure Report to disclose independent expenditures made in connection with a city election during the late reporting period prior to an election is the duty imposed on such committees to file Late Contribution Reports (Form 497) concerning the contributions that they make in a local election. Section 84203, subdivision (a) requires a state committee to file a Late Contribution Report in connection with a local election to disclose any contributions of \$1,000 or more that it makes to support or oppose a local candidate or ballot measure during the late reporting period prior to that election. The Late Contribution Report must be filed by the committee within 24 hours of making the contribution, which is either when the communication is made, or when payment for the communication is made, whichever occurs earlier. (§ 84203, subd. (b); § 82015, subd. (b).) The Late Contribution Report must be filed at every location that the committee is required to file its regular campaign statements. (§ 84203, subd. (a).)

A significant way in which the reporting of late contributions by a state general purpose committee differs from its duty to report late independent expenditures, however, is that it has no accompanying duty to report the contributions that it has received of \$100 or more on the same statement. Section 82036, subdivision (b) includes a provision that requires political party committees to file Late Contribution Reports disclosing any contributions of \$1,000 or more that they receive during the late reporting period prior to a state election, but it does not require the disclosure of contributions received prior to a local election that does not coincide with a state election.

Therefore, a political party committee that makes a payment for a member communication that supports a city candidate and is coordinated with the candidate, and the payment is made during the late reporting period prior to the candidate's election, must report the payment on a Late Contribution Report if the payment totals \$1,000 or

more. However, the political party committee is not required to file a Late Contribution Report disclosing contributions that it received during the late reporting period unless the city's late reporting period coincides with the late reporting period for a state election.

Question 6, Disclosure of Payments in a Special City Election Not Coinciding with a Statewide Election

As noted earlier in this letter, a political party committee is a state general purpose committee, and therefore subject to the reporting duties imposed on such committees, rather than the duties imposed on candidates, including city candidates, as well as other types of committees. Accordingly, a political party committee is not required to disclose the payments that it makes within the same time periods and in the same manner as a city candidate, although their differing duties may in certain instances coincide, as described above.

If you have any other questions regarding this matter, please contact me at (916) 322-5660.

Sincerely,

Luisa Menchaca
General Counsel

By: Steven Benito Russo
Senior Commission Counsel
Legal Division

SBR:rd
I:\AdviceLtrs\I-05-161

Corrected Letter 11/14/05